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***Via Email and Submitted Online***

Regional Freedom of Information Officer  
U.S. EPA, Region 10  
Office of External Affairs  
1200 6th Avenue  
Seattle, WA 98101

To Whom It May Concern:

This is a request for EPA records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, with additional information regarding a fee waiver, on behalf of the Northwest Pulp & Paper Association (NWPPA). The term “records” as used in this request includes all of the following: all writings of any kind, in draft or final form, including reports, studies, correspondence, emails, notes from meetings, drafts, graphs, charts, photographs, technical reports, policy documents, or any other data compilations from which information can be obtained or translated.

We are requesting any and all public records that discuss, document, or form the basis for a “compromise minimum value” with respect to a cancer risk level in the following statement in the March 23, 2015, EPA Region 10 Comments on Washington Department of Ecology’s Proposed Human Health Criteria and Implementation Tools Rule:

Therefore, the EPA supports the state’s decision to derive the human health criteria using a FCR of 175 g/day so long as the state also retains a cancer risk level of  $10^{-6}$ , which **the tribes have generally viewed as a compromise minimum value in tribal consultation.** (Emphasis added)

Fee Waiver Request

EPA is required by law under FOIA to waive search and copying fees where disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). NWPPA requests a waiver or reduction of fees with this request pursuant to 40 CFR § 2.107(l)(5) and 40 C.F.R. § 2.107(l). NWPPA meets all of the factors EPA must consider in a request to waive fees associated with a FOIA request.

NWPPA is a nonprofit organization representing pulp and paper mills in the Western United States including Idaho, Oregon and Washington. Formed in 1956, the NWPPA

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represents 13 member companies and 16 paper mills in Washington, Oregon and Idaho. NWPPA members produce nearly eight million tons of paper products a year and provide approximately 10,000 predominantly union jobs that pay an average of more than \$70,000 a year in wages and benefits. Because many NWPPA members are located in economically stressed rural communities, these family-wage manufacturing jobs help sustain the local economy, with each mill job supporting three to five additional jobs in the community. NWPPA represents its members on legislative and regulatory issues with special emphasis on environmental and energy policy. In addition, NWPPA offers educational information and provides regulatory updates through the Association's newsletter, weekly conference calls and committee meetings.

The contribution to understanding from the requested documents will be for members of NWPPA and the public generally through litigation, rulemaking, and other public decisions regarding the development of human health criteria in Washington, Idaho and other states. This is likely to be a significant contribution to public knowledge in light of the unique role EPA plays in the development of human health water quality criteria. NWPPA has no direct commercial interest in the requested information beyond the fact that revised human health criteria in Washington and Idaho may have a substantial impact on water quality compliance for the association members. In this instance the public's interest in access to the requested information outweighs any commercial interest. NWPPA plans to disseminate the information from this records request to its members and other organizations. NWPPA will not monetarily benefit from this request.

We provide the following information relating to the public benefits associated with our request and the entitlement of NWPPA to a fee waiver in this matter.

1. The Documents Relate to Governmental Activities and Operations or Issues of Great Public Interest.

Washington's Water Quality Standards and proposed changes affect all waters throughout the State of Washington and waters shared with other states such as the Columbia River. The State of Washington and EPA have a strict obligation under the Clean Water Act and applicable administrative procedure law to fully explain and disclose the basis for rulemaking including water quality standards. This request is part of NWPPA's efforts to ensure that Washington and EPA fully comply with these obligations.

The subject of the requested documents concerns the operations of the government. The disclosure of the documents is likely to contribute to an understanding of government operations and the agency's activities around human health water quality criteria.

NWPPA remains concerned that EPA and Region 10 have repeatedly failed to disclose a basis for demanding more stringent risk policies for deriving certain water quality toxics criteria for the protection of public health. Region 10 staff, including Dennis McLerran, have refused to discuss the scientific and technical basis for more stringent

criteria. NWPPA representatives have been told, for example, that the criteria must be based on tribal fish consumption rates and a one in one million risk level because “everyone deserves to be protected to the same level” (D. McLerran, Personal Communication to NWPPA members, April 9, 2012). This statement by Dennis McLerran is not consistent with CWA policy or sound science – there is no way to establish risk based criteria that will protect everyone in a population to the same level (See, e.g., EPA, California Toxics Rule, Response to Comments, CTR-002-005a, December 1999).

It is critical that the public and NWPPA members have a full understanding of the scientific and technical basis for what EPA considers an appropriate range of risk level for deriving human health criteria because EPA stands as the final arbiter of a state’s standards under the Clean Water Act. This request is directed at all public records that describe or document the basis for a compromise risk level established or discussed in tribal consultations. The public has a right to know the basis for the demands being placed on the citizens of the State of Washington.

## 2. Requesters Will Use and Disseminate the Requested Documents for the Public Benefit.

The records sought in this request will contribute greatly to NWPPA’s and the public’s understanding of these important matters and will serve to inform public review and comment on any proposed Ecology or EPA action. NWPPA is a non-profit organization based in Olympia, Washington whose mission is to promote the pulp and paper industry. NWPPA performs its work through public education, legal actions, and involvement in rulemaking and policy development in Washington and Oregon. NWPPA is active in advocating for its members in Washington and Oregon, including submission of comments relating to various water quality matters, and litigation over the Clean Water Act. NWPPA is well-qualified and well-situated to review the requested information, synthesize it, and disseminate it to the general public.

NWPPA will use the requested documents in numerous ways. It will share the documents, synopses of the documents, and expert scientific and potentially legal advice based on review of the documents to the public, elected officials, state agencies and its members. NWPPA will also disseminate the information from the documents to the interested community and the general public through public education activities, including seminars, regular newsletters and specific information to its members and other business organizations. NWPPA is also a recognized contact for the regional and national news media on matters involving water quality and by regulatory agencies that affect water quality.

NWPPA’s dissemination of information will increase public understanding of the importance and impact of Washington water quality standards. It will further increase public understanding of the regulatory process for such issues and will help foster participation by the public in the regulatory process, including, but not limited to, comments on any Ecology proposals. For example, NWPPA submitted public comments that included

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nearly 5,000 pages of documents obtained primarily through Public Disclosure Requests under Washington law and FOIA requests. (These documents are available at <http://www.ecy.wa.gov/programs/wq/ruledev/wac173201A/comments.html>.)

3. Requester Will Not Benefit Financially From the Requested Information.

NWPPA has no commercial interest in, and will not benefit financially from, the requested documents. NWPPA will use the records to participate, in the public's interest, in the various regulatory actions regarding the Washington water quality standards, and to inform the public about the technical and scientific basis for human health criteria.

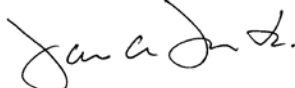
4. Fairness and Equity.

EPA has selectively granted FOIA fee waivers to the public interest law firm Earthjustice, an organization that supports EPA demands in Washington for more stringent risk levels in setting water quality standards, while denying waivers to NWPPA. EPA waived FOIA fees to Earthjustice in 2013 for documents that were later used to support an unsuccessful legal action against EPA – *Puget Soundkeeper Alliance v. EPA*, Case No. C13-1839-JCC. In 2014 EPA denied a fee waiver to NWPPA on a request that covered substantially the same documents. EPA instead provided an estimate of FOIA charges that were extraordinary and clearly intended to thwart access by NWPPA to the public record. EPA later, with no notice, provided NWPPA copies of documents that it had released to Earthjustice under a fee waiver. This occurred seven months after the original NWPPA FOIA request in December 2013 even though EPA had completed the response to Earthjustice by June 2013. This delay and inequitable grant of FOIA fee waivers is unconscionable. It is particularly unconscionable that EPA withheld these documents while NWPPA was briefing and responding to a motion for summary judgment in the lawsuit brought by Earthjustice.

Based on the foregoing, we respectfully request a full fee waiver for production of the requested records. If possible, we would like to receive copies of the requested records in electronic format. If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release information. Please do not hesitate to contact me if you have any questions regarding this request. Thank you in advance for your assistance.

Sincerely,

TUPPER MACK WELLS PLLC



James A. Tupper, Jr.